THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.6472 OF 2006

Dated: 5th June, 2006.

Between:

Roop Singh .. Petitioner

And

1. State Bank of Hyderabad, Sananthnagar Br. Hyderabad, rep. by its authorised Officer

And 3 others. .. Respondents

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WRIT PETITION NO.6472 OF 2006

ORDER :

This writ petition is filed seeking a declaration that all the proceedings pursuant to the auction notice dated 20-3-2006 issued by the 1st respondent Bank under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 without considering the objections raised by the petitioner as arbitrary and illegal.

The petitioner claims to be the absolute owner and possessor of house bearing No.1-8-450/1/B-14 in Plot No.B-14, in Sy.No.194/part situated at Indian Airlines Employees Housing Scheme, Begumpet, Hyderabad having purchased the same under Registered Sale Deed dated 29-12-2005. From the impugned auction notice, it was found that the house belonging to the petitioner was mortgaged in favour of the 1st respondent Bank in connection with the loan availed by the 2nd respondent, to which the respondents 3 and 4 stood as guarantors. The petitioner immediately filed objection petition dated 24-3-2006 bringing to the notice of the 1st respondent Bank that he was the real owner of the property, having purchased the same for a valid consideration. It is stated that without considering the said objections raised by the petitioner, the 1st respondent Bank conducted auction on 27-3-2006. Apprehending that in pursuance of the said sale the petitioner would be dispossessed, this writ petition has been filed

seeking a declaration that the action of the respondents as arbitrary and illegal.

This Court while directing Notice Before Admission, by order dated 3-4-2006 ordered Status Quo obtaining as on that date with regard to the house in question.

Sri Ch. Siva Reddy, the learned Counsel for the 1st respondent Bank, at the outset raised an objection as to the maintainability of the writ petition contending that alternative remedy of appeal is available under Section 17 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') and without exhausting the said remedy, the petitioner cannot maintain this writ petition.

Under Section 17 of the Act, any person aggrieved by any of the measures referred to in Section 13 (4) of the Act taken by secured creditor may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter. In the case on hand, since the impugned auction notice was issued in terms of Section 13 (4) of the Act, the petitioner, if aggrieved, ought to have filed an appeal as provided under Section 17 of the Act before the Debts Recovery Tribunal.

That apart, as noted above, the matter involves several disputed questions of fact which cannot be enquired into by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

In the circumstances, without expressing any opinion on merits, the Writ Petition is disposed of granting leave and liberty to the petitioner to work out the remedy of appeal as provided under Section 17 of the Act. If any such appeal is preferred within a period of two (2) weeks from today, the same shall be entertained and disposed of on merits following due process of law. Keeping in view that the property in question is a residential house stated to be in possession of the petitioner till date, I deem it appropriate to direct all the parties concerned to maintain Status Quo as to the nature and possession of the property in question for a period of four (4) weeks from today.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 5-6-2006
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